LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 14 1964
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1964

No. 487

ARTHUR E. HARRIS,
Petitioner,

versus

WILLIAM F. WALKER, JR., et al.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

N. R. BARKLEY, JR.
JOHN P. HAMMOND
SAMUEL C. GAINSBURGH
Attorneys for Respondents

LEMLE & KELLEHER
MONTGOMERY, BARNETT, BROWN & READ
KIERR & GAINSBURGH
New Orleans, Louisiana
Of Counsel

TABLE OF AUTHORITIES CITED

	Page
Carroll, The (D. C., Md., 1932) 60 F. 2d 985	3
Cleveco, The (C.C.A. 2nd, 1946) 154 F. 2d 605	1
Mitchell v. Trawler Racer, Inc. (1960) 362 U. S. 539	3
Rosalia, The (C.C.A. 2nd, 1920) 264 F. 285	2
Sabine Towing Co. v. Brennan (C.C.A. 5th, 1934) 72 F. 2d 490, *cert. denied* 293 U. S. 161, *rehearing denied* 293 U. S. 362	1
States Steamship Company v. United States (9 Cir., 1958) 259 F. 2d 458, *cert. denied* 358 U. S. 933, *rehearing denied* 359 U. S. 921	1

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 487

ARTHUR E. HARRIS,
Petitioner,

versus

WILLIAM F. WALKER, JR., et al.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Despite the petitioner's efforts to characterize the instant appellate opinion as contrary to opinions of other Courts of Appeals and to clothe the decision with national significance, respondents submit that all the United States Court of Appeals for the Fifth Circuit has done in the instant case is to apply well-established principles of maritime law to the facts as determined by the Trial Court.

1. IF A VESSEL DOES NOT WITHSTAND THE USUAL AND CUSTOMARY WEATHER ENCOUNTERED IN HER TRADE SHE IS PRESUMPTIVELY "UNSEAWORTHY". *States Steamship Company v. United States* (9 Cir., 1958) 259 F.2d 458, *cert. denied* 3 U.S. 933, *rehearing denied* 359 U.S. 921; *The Cleveco* (C.C.A. 2nd, 1946) 154 F.2d 605; *Sabine Towing Co. v. Brennan* (C.C.A. 5th 1934) 72 F.2d 490, *cert. denied* 293 U.S. 161, *rehear-*

ing denied 293 U.S. 562; *The Rosalia* (C.C.A. 2nd, 1920) 264 F. 285.

In applying this settled principle of admiralty law to the facts of this case, the Court of Appeals has merely held that, as a matter of law, the burden of showing that an *unusual or uncustomary* hazard befell the Tug RALPH E. HAVENS was upon the petitioner and that the petitioner completely failed to carry this legal burden of proof.

Petitioner's authorities hold only that a vessel need not be perfect or able to survive *all* storms in order to be seaworthy. While the cases cited by petitioner in support of this proposition do not involve vessel sinkings, even if they did, they are in nowise at variance with the appellate opinion below. Nowhere in that opinion is it held, nor have your respondents at any time suggested, that Petitioner's 52 year old wooden hull "inland" tug should have been able to withstand *all* weather.

All that the Court below has held is that the tug's legal obligation of seaworthiness to its seaman was to be able to survive the customary and usual weather common to the Gulf of Mexico in December. By the Petitioner's own evidence, it is uncontradicted that the weather encountered by the RALPH E. HAVENS on the fatal night was neither *unusual* nor *uncommon*; it is likewise indisputable that the vessel did not survive that weather.

2. IN ORDER TO BE SEAWORTHY, A VESSEL MUST BE EQUIPPED WITH REASONABLY ADEQUATE LIFESAVING DEVICES. *The Carroll* (D. C., Md., 1932) 60 F.2d 985.

The Court of Appeals in the decision below has taken great pains not to hold that petitioner's tug was in violation of any applicable Coast Guard regulations relating to lifesaving equipment. All the Court has held is that, regardless of its size and class, a vessel which goes to sea is a "seagoing vessel", and that the test of "reasonable fitness" must be applied in the light of the actual use to which the vessel is put by its owner. *Mitchell v. Trawler Racer, Inc.* (1960) 362 U. S. 539.

Confronted with the undenied and undeniable fact that two crewmen perished due to exposure and lack of lifesaving equipment, the Court below has, once again, only held, as a matter of law, that the petitioner did not sustain its burden of showing that its *de facto* seagoing vessel met the acceptable standards of reasonable fitness *quoad* its lifesaving devices.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that there is no justification for the issuance of a *writ of certiorari* in this case and that the petition therefore should be denied.

N. B. BARKLEY, JR.
JOHN P. HAMMOND
SAMUEL C. GAINSBURGH
Attorneys for Respondents

Of Counsel

LEMLE & KELLEHER
MONTGOMERY, BARNETT, BROWN & READ
KIERR & GAINSBURGH
New Orleans, Louisiana

October, 1964

CERTIFICATE OF SERVICE

I, Samuel C. Gainsburgh, having been admitted to practice before this Honorable Court on the 9th day of February, 1955, do hereby certify that copies of the above and foregoing brief in opposition to the petition for certiorari have been served upon the petitioner by mailing the same to Eberhard P. Deutsch, Esq., c/o Deutsch, Kerrigan & Stiles, Attorneys at Law, Hibernia Bank Building, 812 Gravier Street, New Orleans, Louisiana, 70112, first class, postage prepaid, at New Orleans, Louisiana, this ___ day of the month of _____, 1964.

Samuel C. Gainsburgh
1740 National Bank of
Commerce Building
New Orleans, Louisiana

MICROCARD 22
TRADE MARK ®

MATTHEW BENDER & COMPANY

CD 2118 2

59-5

microcard